

IV. REMARKS

Claims 1, 3, 5, 7, and 9-13 are pending. Claims 2, 4, 6, and 8 are cancelled. Claims 1, 3, 5, 7 and 9 are amended.

Description of Amendments

A. Correction of Priority Claim

Pursuant to the Official Gazette Notice of March 18, 2003, Applicants have amended the claim of priority to reflect co-pendancy with US Application No. 09/262,725, which was recognized in the filing receipt as shown in Exhibit "A."

B. Claim Amendments

Claim 1 has been amended to provide proper claim construction and to more specifically point out and claim an aspect of the claimed invention without prejudice to other embodiments described in the specification. Specifically, Claim 1 recites a combination therapy with cyclophosphamide (page 14, lines 24-29), methotrexate (page 15, line 16), fluorouracil (page 15, line 6), paclitaxel (page 15, line 20), mitomycin (page 15, line 17), leuprolide (page 15, line 12), leucovorin (page 15, line 11), carboplatin (page 14, line 20), dacarbazine (page 14, line 30), vinblastine (page 15, line 27), etoposide (page 15, line 3), ifosfamide (page 15, line 10), dactinomycin (page 14, line 31), and carmustine (page 14, line 21), support for which can be found on pages 14-15 of the specification as indicated.

Claim 3 has been amended to remove compounds more properly dependent from claim 5.

Claim 5 has been amended to add the phrase "sensitive to the combination", and to more specifically point out and claim an aspect of the claimed invention without prejudice to other embodiments described in the specification, support for which can be found on pages 14-15.

Claim 7 has been amended to remove compounds more properly dependent from claim 1.

Claim 9 has been amended to more specifically point out and claim an aspect of the claimed invention without prejudice to other embodiments described in the specification, support for which can be found on pages 14-15.

Claim Rejections

I. Rejections under obvious-type double patenting

C. Amended claims 1, 3, 5, 7, 9-11 are non-obvious over claims 1-13 of US 6,372,719

On page 2-3 of the Office Action, the Office rejects claims 1-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,372,719. Applicants submit that the amended claims 1, 3, 5, 7, 9-11 are distinct from claims 1-13 of U.S. Patent No. 6,372,719, and that no obvious-type double patenting rejection should be maintained.

II. Rejections under 35 U.S.C. § 112

A. Amended claims 1 and 3 are definite

On page 3 of the Office Action, Claim 1 (and dependent Claims 2-4) were rejected as being directed toward a method without any steps. Applicants submit that Claim 1 as amended is definite, and request that the rejection be withdrawn.

B. Amended claims 1-13 are enabled

On pages 3-4 of the Office Action, Claims 1-13 were rejected as allegedly not enabling the practice of treating or preventing any neoplasia. Applicants submit that amended Claims 1, 3, 5, 7, 9-11 are directed toward the treatment of a neoplasia disease *sensitive to the combination*, and not every neoplasia. The standard treatment of various solid tumors using various chemotherapeutic agents is well-known in the art (see, for example, Lippincott's Cancer Chemotherapy Handbook, Delia C. Baquiran and Jean Gallagher, Lippincott Williams & Wilkins Publishers; 1st edition (January 15, 1998)), and the median dosages for these chemotherapeutic agents is given on pages 14-15 of the specification. Therefore, no undue experimentation required by one of skill to combine the standards of treatment for a given neoplasia and the compounds of the present invention.

III. Rejections under 35 U.S.C. § 103(a)

C. Amended claims 1-4 are non-obvious

On pages 5-6, the Office rejects claims 1-13 as being obvious in light of Rogers et al. (US Patent 6,013,651) and Remington's Pharmaceutical Sciences.

Applicants submit that Rogers et al. is a co-owned patent that was filed on March 4, 1998, issued on January 11, 2000 and assigned to G.D. Searle & Co.. Considering the priority claim of the present application (back to March 4, 1998, the same filing date as the Rogers et al. reference), a §103(a) rejection is improper. Given the priority dates, only §§103(e), (f), or (g) could potentially apply to the instant application. However, these rejections would likewise be improper because the inventors in the present case were under an obligation to assign to the same entity (G.D. Searle & Co.), as evidenced by the assignment to G. D. Searle recorded on Reel No. 013232/ Frame No. 0021. Therefore, Applicants submit that the rejection is improper, and request that it be withdrawn.

It is therefore submitted that Claims 1, 3, 5, 7, and 9-13 are in condition for allowance. If the Office has any further comments or concerns, the Examiner is welcome to contact Applicants at the number below.

Respectfully submitted,



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